

69 Polemigue No 8

MARRIAGE WITH

# DECEASED WIFE'S SISTER

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## LETTERS

TO THE

EDITOR OF THE MONTREAL "GAZETTE"

IN REPLY TO

THE REV. HENRY ROE, D.D.,

BY

R. D. MCGIBBON, B.A.,

BARRISTER,

MONTREAL.

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## MARRIAGE WITH A DECEASED WIFE'S SISTER.

### THE LAW OF MARRIAGE.

TO THE EDITOR OF THE GAZETTE.

Sir,—I have waited some days in the expectation that the Reverend Mr. Roe would complete his series of letters: but, like the brook, he seems destined to go on for ever. Whatever weight these letters may possess must be ascribed rather to their length than to any arguments they embody or to their facts; and for this reason, as well as because the stability of public opinion was not in much danger of being disturbed, I recently stated that any reply would be generally felt to be unnecessary. In your correspondent's fourth letter, however, there is an offensive phrase regarding those who "hold a brief for violators of the law," which may possibly be levelled at myself; and I wish, therefore, to be allowed to indignantly deny the justice of the insinuation (if it be so intended), while offering—as Mr. Roe has thrown out a definite challenge, and further silence might be misinterpreted—a few facts by way of counterpoise to his erroneous assumptions, his apprehensions and his prophecies.

I should perhaps correct myself and admit that some weight is due to Mr. Roe's mastery of adjectives. "Sweet, pure, free, joyous, happy Christian English homes" cannot be easily surpassed either in wealth of colouring, bathos, or Pharisaism; though room seems to be left for improvement in respect of truth and accuracy. There is too much reason to fear that if the English standard of morality were placed side by side with that of say Saxony, Switzerland, Bulgaria, Holland, or even of the New England States, the result of the comparison would hardly be reassuring to Mr. Roe's Pecksniffian self-complacency. For example, there is in London, in proportion to inhabitants, more prostitution than in New York, Paris, Vienna, or Constantinople, and in the

southwest of Scotland, where marriage with a deceased wife's sister was formerly punishable with death, more illegitimacy than in any other part of the known world.

It will be observed that Mr. Roe is specially strong on the *facilis decensus Averni*. Permit marriage with a deceased wife's sister and we at once start on a "terrible course of degrading legislation:" social revolution will set in; men's passions will become uncontrollable; great-grandmothers, great-aunts, and other pre-adamite feminine fossils will be in the utmost danger, and divorce become as common as down in old Kentuck or Arkansaw—just as in Germany! The reverend gentleman is not posted for it is on record that neither in Germany, nor in any part of Europe, is it possible to trace any of the social evils which he apprehends to the relaxation of the law in regard to the wife's sister. On the contrary; in Germany divorce is in every way discouraged; special means are employed, and with extraordinary success, to prevent it,—the system of *Sühneveruche* being established for this purpose. Divorced persons cannot remarry, while in the sweet, pure, happy (I forget the other adjectives) homes of England they may. Catholics, whom Mr. Roe accuses of the most shocking laxity in the matter of marriage, have always opposed divorce—which, he says, must necessarily follow permission to marry a deceased wife's sister—to the death. The English law of divorce was not passed when these marriages were practically allowed, but after they were vigorously forbidden. Neither divorce courts nor divorce cases have multiplied in Australia in consequence of the Queen having sanctioned such marriages throughout that continent. On the Isle of Man marriage with a sister-in-law has for centuries been virtually free, and yet it would be difficult, if not impossible, to find

anywhere on the face of the globe a more moral or more happy people than the inhabitants of that island. Divorce is almost unknown; there is but little crime of any kind. During the whole forty-four years of Her Majesty's reign only one Manxman has suffered the extreme penalty of the law, and he, unfortunately for Mr. Roe's theory, was not hung for incest. So much for the reverend gentleman's inclined plane.

What he ought of course to show, but what he prudently avoids touching, is that in countries where men are permitted to marry their wives' sisters there is an unusual tendency to divorce with the object of acquiring those sisters. Further investigation will satisfy him that divorce rarely or never takes place in such cases, but that now again the public sentiment is intensely shocked—as happened recently in Nova Scotia—at witnessing a heartless case of separation or desertion which, had it not been for our prohibitory law, would never have occurred.

Another strong point with Mr. Roe is logic; but it is *sui generis*. Logically, he says, the Americans *ought*, as the result of permitting these marriages, to suffer serious inconveniences, but adds that his information is to the effect that they do not. Still, they *will*, because it is irresistibly logical they should. How very funny! Your correspondent goes on to say that the main safeguard of our domestic purity has been an "*instinctive horror*" of improper relationships and his logical deduction from this fact—for singularly enough, there is *one* fact in Mr. Roe's letters and a very important one too—is the, imperative necessity for positive prohibitory laws. No law, no instinct. His logic culminates in the assertion that the brother's widow *must* follow the wife's sister. This, he says, he infers from analogy, and from "*axiomatic principles*" which are also themselves inferential: When Euclid set out with his system of reasoning, he, like Mr. Roe, propounded certain axioms. A straight line, said he, is the nearest distance between two points. About that there can't be much controversy; but Mr. Roe's *inferential* axioms are perhaps a little defective. To take his main contention—that the case of the brother's widow and that of the wife's sister are absolutely identical. Where does he discover this exact analogy? Not in Mosaic legislation certainly, nor in the teachings of physiology, any more than in the usages of primitive society, or in the estimation of modern sentiment. The statistics which are in evidence

to prove that the public have always entertained a feeling of repugnance towards a brother's widow marriage, not felt in the case of the wife's sister, are very convincing. Mr. Roe should inquire into this. But, he argues, the law of Moses was bound to be symmetrical, and the only corresponding case to the brother's widow, in which marriage is positively forbidden, is that of the wife's sister. Will the reverend gentleman be good enough to tell us in what countries and in what ages of the world the laws of marriage and divorce have applied exactly to the woman as they have to the man? He ought at least to know that such symmetry was altogether foreign to the family and tribal law, universal in Israel, through the operation of which a man's relations became his wife's relations, but the wife's relations did not become his. The law of Moses was not symmetrical in Mr. Roe's sense, and was never intended to be. Where, indeed, is the boasted symmetry of our English law? Can we justify marriage between two brothers and two sisters, and yet prohibit the wife's niece? Where is the principle which includes the first cousin and excludes the niece in blood? Well, but, says Mr. Roe, if this principle of symmetry be rejected and the wife's sister be legalized, where will you stop? And at this point, reinforced by "*Censor*", he triumphantly challenges us to name any other possible principle whatever. Solely on my own responsibility, and not as the medium of the opinions of others, I reply that the principle for our Legislature (as the Legislature of a Christian country) to adopt is the Bible principle, which for the sake of symmetry, Mr. Roe would set aside. The 18th chap. of Leviticus forbids all marriages among those who are near of kin, that is, blood relations, whether distinctly expressed or not. Let our Legislature do the same. The prohibition extends, plainly and unmistakably, to certain degrees of affinity; and so far where have we room for doubt or hesitation? But there other cases (that of the wife's sister not being one of them, for the language there is as plain as words can make it) which are thought to be open to debate, the case of the wife's niece being possible in this category. Where is the danger of leaving such cases to the concurrent judgment of Christian scholars in the first place, and then to public opinion, and the consciences of those individuals who wish to marry? I see none.

Mr. Roe's next appeal is to our conservatism and love of antiquity. Here, says he, is a law become venerable by age, and one

which has remained inviolate since England became Christian. How can you be so sacrilegious as to propose to alter it? These are most respectable reasons for letting matters rest—if true. But, is it true, as he says, that Mr. Girouard, if he succeeds, will be the first to destroy the "old stern strictness" of the English law?

What marriage code St Augustine brought with him probably neither your correspondent nor anyone else can precisely tell. What we all know is, that marriage with a deceased wife's sister was first prohibited by a council of foreign bishops in the fourth century; that some of those bishops, so far from being biblical authorities, could not write their own names; that already a century and more before this date the spirit of casuistry had led to the prohibition of all second marriages among the clergy on pain of exclusion from heaven; bishops could not marry widows, and third marriages were held to be beastly and worse than fornication; that in Anglo-Saxon times the entire celibacy of the clergy was enforced with unbending rigor; that prior to the Reformation the "old stern strictness" of the law forbade marriage among all classes within the seventh degree of spiritual affinity—a man's god-parents and the priest who had baptized him being held to be in more near and sacred relation to him than persons connected with him by blood; than it was then maintained that any relaxation of this law would necessarily be followed by those awful consequences now predicted by Mr. Roe: that although the relaxation has taken place to an extent which the present generation is quite unable to realize, our homes are nevertheless, on the testimony of Mr. Roe himself, sweet, pure, Christian and unhappy: that Henry VIII, who, be it remembered, assumed the headship of the Church as well as of the State, first passed a law expressly declaring who might not marry, and afterwards substituted another statute making all marriages free to all persons "whom God's law doth allow," that this statute has never been repealed: that in the same reign, brother's widow marriages were made illegal, but were subsequently declared illegal and valid and wholly in accord with the Word of God by the first Parliament of Queen Mary; that Mary's legislation was first confirmed and then reversed by Queen Elizabeth; that in this latter reign Archbishop Parker promulgated the Table of Degrees, now in use in our churches generally, but which was then enforced or not in the various dioceses at the discretion of the Bishops; that about the same

period the latter law of Henry VIII. became the law of Scotland to be *practically*, though not legally, superseded in 1661 by the confession of Faith, which made all marriages of affinity incestuous, incest being at that time punishable with death; that in 1603 Parker's table was confirmed by Convocation, but this confirmation was not ratified by Parliament, and has never been authoritatively acknowledged by the laity to this day; that in 1611 the translators of the Bible, following the authors of the Septuagint version of three centuries before Christ, the version which was commonly quoted by Our Lord and his apostles, contrary to the convocation of 1603, gave preference to the view that marriage with a sister-in-law is forbidden only "so long as the wife liveth," and, lastly that in 1835 the English law which had for nearly two centuries recognized marriage with a deceased wife's sister as valid, decreed all such marriages theretofore contracted good and all subsequent marriages of the same class bad, and that this was done, not with the sanction of public opinion, but in spite of it, *for a fee!* well, this is Mr. Roe's "uniform unvarying law," which, in the matter of degrees especially, has, according to his assertion, undergone no change since the days of St. Augustine, nor from the time of that Saint to that of the Sinner Girouard been modified in its pristine sternness. In this connection, let me, with deference, remind him that a much higher authority than he, the Late Lord Chief Justice Campbell, once said that for a very long period in English history during which there were practically *no marriage laws at all*, there was a remarkable absence of any violation of the laws of nature or of moral propriety, while according to another equally eminent jurist (Judge Fraser, in his "Husband and Wife,") when the Marriage Code was of unparalleled rigidity, vice and immorality were rampant and general.

With your permission sir, I will reply to Mr. Roe's fourth and subsequent letters later on.

I am, sir,

Your obedient servant,  
R. D. MCGIBBON.

Montreal, 11th January, 1882.

#### **THE LAW OF MARRIAGE—II.**

TO THE EDITOR OF THE GAZETTE.

SIR,—Mr. Roe informs us that he has still another letter. His fecundity is a marvel. In dealing more in detail with the Scriptural

aspect of this question, he asks us to concede that the eighteenth chapter of Leviticus is of universal application—to Christian as to Jew. We readily agree—though a similar admission has often been stoutly attacked. Which portions of the Mosaic law are Christians bound to respect, and which may they rightly disregard? On what principle are they to make their selection? Is there no force whatever in the argument of those (many of them distinguished scholars) who contend that this chapter does not contain a marriage code at all, but simply a series of prohibitions against incestuous practices which the Jews had begun to adopt through contact with the heathen nations surrounding them? And, is there no plausibility in the opinion of others who hold that the law of the eighteenth Leviticus was a positive law framed for the observance of the Israelites only? Accepting this chapter as part of the universal moral law, what follows? Why, says your correspondent, "it is absolutely conclusive that, as the brother's widow is positively forbidden in the 16th verse, the wife's sister is inferentially forbidden in the 18th, because it is reasonable to assume that what is expressly forbidden to one sex should be understood as forbidden to the other." I have already shown that such an assumption is not only *not* well founded, but opposed to fact. A Jew's brother's widow was a member of his family, his wife's sister—unless descended from the same stock—was not, and for this reason the argument from inference and the assumed identity of position of the two sexes entirely fail. Moses, we are told, was learned in all the learning of the Egyptians, and yet, reverend disputants would have us believe that this skilful law-maker in drawing up a statute would frame a special clause (18th verse) for a particular case, and yet, after all, leave his intentions with regard to that case to be inferred from other clauses. Would any modern draughtsman be so slipshod? Is the supposition probable? If not, then we are driven back upon the meaning of the 18th verse, which was written, not by a learned and clever man merely, but by an inspired one, and it may be asked whether it is conceivable that if this inspired author intended to prohibit a particular marriage upon the illegality of which, according to Mr. Roe, the whole social fabric and our domestic peace and happiness depend, his language would be so obscure as to give rise to centuries of dispute? In truth, there is probably no text in the entire range of

Scripture the meaning of which is more palpable than that of the 18th verse in this chapter of Leviticus. But, admitting for a moment that there is room for doubt; then, clearly, the whole argument relating to it must be determined by the weight of authority.

Let us take Mr. Roe's authorities first. He quotes Lord Coleridge as having twitted the promoters of a change of the law in England with being guided by no principle. I have already, in my former letter, pointed out that the "no principle" of Lord Coleridge and his friends means simply not their principle, viz., the principle of so-called symmetry, which we contend, and have contended, is unscriptural. Far from being "dumb" on this point, the position taken up by the advocates of reform had been reiterated so often that Lord Houghton particularly requested his supporters, who were anxious to reply to Lord Coleridge, not to do so. There was an impatience, moreover, to come to an immediate vote; first, because the majority did not wish to see the effect of Lord Coleridge's speech damaged; second, because the dinner bell had rung (the Lords always religiously dine); and third, because the three Royal Princes, who, it was well known had other appointments for that evening, were waiting, at great inconvenience to themselves, to support the bill. I learned these facts from a gentleman who is intimately acquainted with English parliamentary procedure, who was present throughout the whole of this debate, and who himself a day or two subsequently denied in the most positive terms in the *London Times* the truth of the statements on which Lord Coleridge had rested much of his argument. His Lordship's only reply was made in private to Lord Houghton, and was to the effect that if the rebutting facts contained in the letter to the *Times* could be substantiated—as, of course, they could, for no one has ever attempted to disprove them—the recently rejected bill would become law. But further, Lord Coleridge said in his now famous speech that the view which a Legislature must take of this question of marriage must be largely influenced by the circumstances of society, and especially by what the higher intelligence of society might at the moment regard as right. Well, sir, both Lord Coleridge and Lord Selborne (another of Mr. Roe's authorities), both of them men of the ascetic High Church school, have taken advantage of their own supremely "high intelligence," to permit their daughters, so carefully guarded against marriage with affines, to enter into matrimo-



nial alliances which are pronouncedly consanguineous!

Lord Campbell was in favor of the restraints of marriage imposed by the Confession of Faith, but admitted that when such restraints were unknown morality was high, when they were enforced with uncompromising severity the degeneracy in morals was appalling.

Lord Chancellor Hatherley, it is not disputed, was a pre-eminently good man. But extremely good men, like David and St. Peter, are sometimes subject to unaccountable aberrations, and Lord Hatherley's weakness was a morbid antipathy to the wife's sister. On one occasion he declared in the House of Lords that rather than see this marriage legalized he would prefer that the homes of England should be invaded by a hundred thousand foreign troops. At another time he assured his fellow Peers of the *certainly* that in the parish with which he had been connected for forty years, and every corner of which he knew intimately, not more than one, or at the most three of these marriages had taken place. An inquiry in that parish, set on foot in consequence of his Lordship's assertion, led to the discovery, in the short space of three days, of not less than one hundred and forty such marriages.

Everyone has heard of the great abilities of Lord Salisbury and Lord Carnarvon as politicians, but no one knew until to-day that they were high authorities on the marriage laws. Rumour says that the vote of the former is not the result of conviction so much as dictation, proceeding from quarters where men who are so weak as to take to themselves wives must now and again succumb to superior influences. Bishop Philpott's "unanswerable" speech was so completely answered by Dr. McCaul, Serjeant Manning and others, that, until Mr. Roe resuscitated him, the bishop had long since ceased to be quoted even by his admirers. The scholarly Bishop Thirlwall declared emphatically that in his opinion the prohibition of these marriages could be defended on scriptural grounds, but he thought them objectionable from the point of view of expediency. Why does not Mr. Roe preach a crusade against marriages whose inexpediency is far more obvious? Finally, sir, your correspondent calls up Bishop Henley, whose authority, it seems, is considered all the more weighty because he was "the father of Dean Stanley." Well, Dean Stanley himself—the greater son of a great father—a short time before his death, pooh-poohed the scriptural arguments against these marriages as so much ecclesiastical rubbish.

There remain three other distinguished authorities which are not named by Mr. Roe, but two of which ought, at all events, to have figured in his catalogue, because they certainly can lay claim to much higher scholarship than some of those whose authority he parades. These two are Dr. Pusey, Dean of Christ Church, and Dr. Wordsworth, Bishop of Lincoln. The former of these divines unreservedly admitted before the Royal Commission of 1847-48 that the Jews allowed the marriages in question, as being in accordance with Mosaic law, but, confident of his superior knowledge of Hebrew, and differing from all the learned Rabbis of this and every age, he has spent more ingenuity in wresting the seventeenth and eighteenth of Leviticus from its obvious meaning, in order to make it fit his preconceived notions, than could be described in a volume. The "Great Dean" first adopted an interpretation of that passage which was never even heard of at any time or among any people until the latter half of the sixteenth century; he subsequently shifted his ground, and finally landed no one knows where. In England the Dean's authority is dead. Dr. Wordsworth, while differing from the Dean in interpretation, also denounces those marriages as prohibited in Scripture, but he somewhat discourages our confidence in him as an authority by deducing from the same sacred source the doctrine that all dissenters—and especially Methodists—are in danger of damnation.

The last and ultimate authority is the Rev. Henry Roe, of Bishop's College, Lennoxville. I add his address with a purpose. Christian men and Christian women, who only a fortnight ago read with wondering delight his beautiful idylls on the sweetness and purity of English homes, have since become convinced that his real estimate of those homes is something far different. He, in truth, tenants them with creatures so degraded and bestial that we must infer that the casting in an opposite direction of those three votes in the Dominion Senate, which for a moment in 1880 hung so dubiously suspended between principle on one side and delay on the other, was alone required to prove our women Cleopatras and our men a species of civilized Calibans. For the sake of decency, if not to repel the foul aspersions thrown on their husbands, their sisters and themselves, the wives of Canada ought surely to write to Mr. Roe and remind him that much sacerdotalism has made him mad. If their modest reserve prevents their doing this, let me tell him, and I am not speaking without knowledge, that many of the laity of the Dominion

who take a prominent part in church work, and whose characters are above suspicion, are intensely disgusted (the term is not mine) at the exaggerated and wholly unwarrantable language used by himself and a few other clergymen in this matter. At the very moment I am writing, a letter has reached me from a gentleman of position in society, who, among other epithets, applies to Mr. Roe's correspondence those of "indecent" and "unnatural."

But now to quote some authorities on the other side. Mr. Roe cites only Lord Chancellors and Bishops—nobody less elevated than a Marquis or an Earl. I must sorrowfully admit that many on whom I must rely are of meaner clay. Let me begin with the Jews. The reverend gentleman dare not deny that in every period of Jewish history, from the time of Moses to the present hour, marriage with a deceased wife's sister has been common among the chosen race. Which of their dearest kings and rulers, which of their prophets, which of their rabbis or their learned professors, has ever denounced such marriages as contrary to the law of God? Did Samuel or David; did Isaiah, Nehemiah or Ezra; did the eminent authors of the Mishna, or have their scholarly and pious representatives of the present day, such as Dr. Adler and Dr. de Sola, ever done so? What of our Lord and his Apostles? Christ was at the marriage feast of Cana; He spoke with the much-married woman of Samaria; His opinions were asked by those who would entangle him in the case of the woman who had been married to seven brothers in succession; He strongly rebuked those who would have stoned the woman taken in adultery; He reproved the Jews in the matter of divorce. Were not all these occasions of which, if these people had systematically violated their marriage law, advantage might and would probably have been taken to remind them of the national sin? Mr. Roe quotes St. Paul. I am glad of it. Paul was a bachelor, not partial to marriage, though he wrote a great deal about it; sharp to detect and to condemn any breach of the law, and rather more profound than some modern divines in his knowledge of Hebrew and of Jewish customs and ordinances. Yet he seems never to have written a warning epistle, not even a verse, nor to have uttered a monition of any kind against the deceased wife's sister. Our Lord, as I have previously said, usually quoted from that version of the Scriptures known as the "Septuagint." The author of this version lived not long after the later prophets, and must have known the Jewish law. Will

Mr. Roe point out in the Septuagint or any other of the early authoritative versions, any gloss, or comment, or the turning of a phrase which supports his interpretation of Lev. xviii, 18. Will he deal with the Patriotic writings in the same way? Will he take up the Mishna, and tell us how he explains the following passage, chap. iv, 13: "If his wife die, he is allowed to marry her sister. If he divorce her, and she die, he is allowed to marry her sister. If she be married to another man and die he is allowed to marry her sister. If his brother's widow die, he is allowed to marry her sister. If he have performed to her the ceremony of taking off the shoe, and she die, he is allowed to marry her sister; if she marry another man and die, he is allowed to marry her sister." Will he examine the following passage in the Speaker's Commentary—"the latest effort of the combined scholarship of this age and nation"—and tell us how, as a good churchman, he can stand by the Canons of 1603 and reject the Commentary, which is of infinitely superior weight? "The rule," says the Commentary, "as it here stands (Lev. xviii, 18) would seem to bear no other meaning than that a man is not to form a connection with his wife's sister while his wife is alive. It appears to follow that the law permitted marriage with the sister of a deceased wife. . . . The testimony of the Rabbinical Jews in the Targums, the Mishna, and their later writings; that of the Hellenistic Jews in the Septuagint and Philo; that of the early and mediæval church in the old Italic, the Vulgate, with the other early versions of the Old Testament, and in every reference to the text in the Fathers and schoolmen, are unanimous in supporting, or not in any wise opposing, the common rendering of the passage. This interpretation, indeed, appears to have stood its ground unchallenged, from the third century before Christ to the middle of the sixteenth century after Christ." The gloss here referred to as first suggested in the sixteenth century (the actual date was 1575) was rejected by St. James' translators in the seventeenth century, and, as Mr. Roe is fond of prophecy, I will venture to present him with one which does not seem to have occurred to him, viz., that when our new translation appears a year or two hence it will be found that its authors, with the Bishop of Gloucester and Bristol (a hater of the wife's sister) at their head, have utterly demolished his own fancy interpretations. Quitting the Jews and early Christians I will next ask Mr. Roe, which of all the



Christian states in the modern world—England among them—has not acted on the assumption that the Jewish interpretation is the correct one, and whether the authority of his half-dozen peers can be reasonably accepted in opposition to the collective wisdom of so many governments and nations? Descending from peoples to sects let me ask your correspondent to name any denomination of Christians in the British Empire, outside the numerically—though I cheerfully admit not an intellectually-insignificant one to which he belongs (the Ritualists), the vast majority of the members of which do not reject his arguments supposed to be based on Scripture.

As to individuals I admit his "giants," though as I have shown, they do not by any means fight on the same battle-ground or under the influence of the same views as himself. Still Giant Campbell would have found his match in Giant Lyndhurst, Selborne in Cockburn, Coleridge in Westbury, and Hatherley in Penzance. Brougham, whose name in these later days has become almost synonymous with narrowness, prided himself in knowing everything; but, if he was omniscient, then Gladstone (who supports the wife's sister), knows everything and something else besides. Mr. Roe's strength, however, lies largely in Bishops, and yet, with the Archbishop of Canterbury on her side, and with such Bishops and Archbishops in her train as Whately, of Dublin, Musgrave, of York, Lonsdale, of Lichfield, Fitzgerald, of York, Bickersteth, of Ripon, and Buckland, of Bath, the deceased wife's sister has no reason to be ashamed of her episcopal following; while, if she might go back to a period antecedent to the rise of asceticism and ritualism, her giants in lawn sleeves would be unapproachable. In these episcopally degenerate days she is not anxious for the support of Bishops, for from the anti-slavery movement downwards the mitre and the crozier have invariably arrayed themselves on the wrong side, and the Bishops lived to see the cause they championed ignominiously fail. The sister is content to be supported by such pious and erudite churchmen as Stanley and Vaughan, by such scholars as Robertson, Max Muller, Adler and McCaul, by such earnest-minded statesmen as Cornwall Lewis and Russell, and by such dissenting divines as Chalmers, Tulloch, Caird, Macmillan, the Venerable Moffatt, Eadie and McLeod. But not to pursue this matter of authority to inordinate limits, if we are to settle the whole controversy by a display of big names, let Mr. Roe send his complete list

to the GAZETTE, and for every one of his authorities of repute I will undertake to say the friends of Mr. Girouard's bill will produce *three* of acknowledged respectability and weight.

In a third letter (and I promise it shall be very brief) I would like to reply to Mr. Roe's "one-flesh" argument, and will then leave him to be further dealt with by abler pens.

I am, sir,

Your obedient servant,

R. D. MCGIBBON.

Montreal, January 18th, 1882.

### THE LAW OF MARRIAGE.

TO THE EDITOR OF THE GAZETTE.

SIR,—In my last letter I promised I would this time be very brief. But since then Mr. Roe has sent you his sixth communication, containing more inaccuracies and more unwarrantable conclusions, probably, than were ever before crowded into two columns of a newspaper. Hypotheses without warrant, assumptions in place of facts, and fallacies which do duty for argument are piled up in endless succession. Let me give a few illustrations of his mode of treating this question. (1) In his sixth letter he again infers the prohibition of the wife's sister from that of the brother's widow. Such an inference was never drawn, and could never have been drawn by the people to whom the law was delivered. (2) The version, he says, given in the margin of Lev. xviii and 18 "has much authority in its favor," the truth being that that version was never suggested till the sixteenth century, and that it is absolutely without any authority which Mr. Roe dare venture to quote. (3) We are next told that this verse is taken "by many of the best modern authorities" in the sense of prohibiting polygamy. I challenge the writer to produce even *one* eminent Hebraist who unmistakably adopts that view. (4) "It is quite certain," says Dr. Roe, "that the Christian Church from the *very beginning*" (the italics are his own) "took the opposite view" to that held by the Jews on the subject of verse 18. I deny this absolutely, and challenge the writer to name a single respectable authority for his statement. (5) The fact is *demonstrated*, he says, because Lord Houghton himself declared that there was a general consensus in the Christian Church *from very early times* against these marriages. In the first place, I would remind Mr. Roe that "very early times" and

"the very beginning" are not in any language but his own interchangeable phrases; and, in the next place, I deny that Lord Houghton ever used the language which the reporters and Mr. Roe have attributed to him. Lying before me is the speech, carefully corrected by his own pen, which Lord Houghton delivered in the House of Lords in May, 1879, and from that speech I extract the following passage:—"Forbidden by the statute of Henry VIII, (*which, in itself, implied their previous legality under the dispensation of the Church,*) these marriages were expressly sanctioned," &c. Now, having used that language in 1879, approved it in manuscript, sent it to the printer, and re-read it in type, how could Lord Houghton have made the statement ascribed to him in his speech of 1880? If I desired to be hypercritical, I might point out to Mr. Roe that there was no debate at all on this subject in the House of Lords "last spring," and that Lord Houghton did not at that period give vent to any utterances whatever, either "unwillingly" or willingly. (6.) "The fact remains," says the reverend gentleman, "that all the Christian churches in the world in the first three centuries held that marriage with a wife's sister was forbidden in Scripture, and so held as what had been handed down to them from the Apostles." To this bold statement—not to characterize it by any other epithet, I reply that marriage with a deceased wife's sister was never prohibited by the Church until the fourth century, and that it is quite impossible for Mr. Roe or any one else to produce the smallest scrap of tangible evidence that the Apostles handed down either any tradition or any law differing from the law as it was understood by the Jews. (7.) Again, "If the Jewish authorities of our Lord's day ruled that a wife's sister might be taken in marriage, then Christ and his Apostles overruled that ruling and established this as one of the degrees forbidden to his Church forever." Had Mr. Roe, instead of penning this sentence, declared that the rules of the Montreal Snowshoe Club are plainly written in the Four Gospels, there is a sense in which his language would have been true, because the rules in question are supposed to be founded on those principles of right and justice which the Evangelists constantly inculcate; but to tell us that there is in the whole of the New Testament, either in the writings of the Apostles or the utterances of our Lord, a word which, far from establishing a law in regard to the wife's sister, even indicates what Christ or the Apostles themselves ex-

pressed on the subject, is to state what is undeniably contrary to fact.

The above are a few only of the statements of Mr. Roe which are open, not merely to criticism, but to positive contradiction. His groundless assumptions occur in almost every line. To expose them in detail would be to fill the *GAZETTE*. In his last two letters the three main points of his argument (?) relate, (1) to kinship, (2) to the precise meaning of Lev. xviii., 18, and (3) to an absolutely new doctrine connected with interpretation.

The phrase "near of kin," as used by Moses, is equally applicable, says Mr. Roe, to affinity and consanguinity, which startling and novel doctrine is thus deduced: Moses pronounces a general edict—the Israelites are not to marry their *near of kin*. He then particularizes, mentioning by name certain relations in blood and certain affines who may not marry. The incontrovertible conclusion, according to Mr. Roe, is that affines and blood relations are both "near of kin." Let us see what this kind of logic leads to. Thou shalt not covet thy neighbor's cattle; thou shalt not covet his horse, his ox, his ass, his man servant or his maid servant. My neighbor's horse, his ox and his ass are his cattle; and so also, says Mr. Roe, are his man servant and his maid servant! In all languages, in our laws, by the common sense of mankind, as well as by the highest scholarship, the application of the words "near of kin" is confined to new relations by blood. Their common rendering by all German translators, including Luther himself, is blutsverwandten. The Hebrew original expresses precisely the same meaning, and Mr. Roe knows perfectly well, though he would have us believe otherwise, that the language of verses 12, 13 and 17, used in reference to certain cases of affinity, is not only different in form but different in meaning from that used in the 6th verse. If it be admitted that there is no distinction between kindred and affinity, where was the necessity for Archbishop Parker using both these terms to decide his Table of Degrees? One of them would surely have sufficed. Moreover that table, and consequently Mr. Roe's Church, permits marriages of affinity which, according to his principle, ought to be forbidden. As for example, with a son's wife's sister, son's wife's mother, wife's step-mother, step-mother's daughter by a former marriage or an own step-mother's or setp-father's sister. If, again, a sister-in-law stand in precisely the same nearness of relationship as an own sister, where is the justice of charging the for-

mer ten per cent. legacy only while the latter is charged only three? To evolve this identity of relationship from the Pauline passage, "they *twain* shall be one flesh," is to wrest language from its ordinary and natural significance in a way known only to polemical ecclesiastics. St. Paul perfectly well understood the importance of being precise, but as if to leave no shadow of excuse for misapprehension or wilfully erroneous inferences, he gives his testimony, in presence of men "who knew the law, that if a woman's husband die she is loosed from the law of her husband," and in face of that text Mr. Roe's theory of consanguineous-affinity, preposterous and monstrous in itself, becomes a defiance both by knowledge and inspiration. Is he prepared to accept the consequences of it? If a man be joined to a harlot she virtually becomes his wife. Does Mr. Roe in this case also insist on the harlot's sister's "rights" of inheritance and succession and on those thousand endearments which are a sister-in-law's one?

In regard to the reverend gentleman's second point—the construction and grammatical meaning of Lev. xiii, 18, I do not propose following him over these heaps of strictly modern hypothesis, peculiar to the district of Lennoxville, upon which he sets himself that his case is completely and irrefragably made out. I will deal only with his main proposition, that the reading in the margin, supported, he says, by the best authorities, is fatal to the received interpretation of the text. Why does not this gentleman tell us who it was who first suggested that reading, the date at which it originally appeared, the translations of the Bible in which it was ever honored by being taken out of the margin and put in the text; why does he not name the period in the history of his own church when that marginal passage was ordered to be read publicly before the congregations as the authorized interpretation, the verse to which it is attached; why not tell us whether Archbishop Parker, the author of the table of prohibitions, himself, in his own translation of the Bible, gave a preference for this note, and why finally does he not give the names of the eminent authorities said to support his views? The answer to these questions simply is—he dare

not. Let me suggest to him that very distinguished authority on the analysis and meaning of words, Dr. Trench, the Archbishop of Dublin. Dr. Trench does not like to legalize the wife's sister for fear she should be deprived of those thousand endearments, &c.; but what does he say of Mr. Roe's marginal words? That "readers of Scripture acquiesce for the most part, and naturally acquiesce, to the verdict of the translators about them; who, by placing them in the margin, and not in the text, evidently declare that they consider them not the best." This is the view of one of Mr. Roe's friends! with whom I may leave him.

But your correspondent, who had many days before prepared us to expect some overwhelming fact or argument, which, while rendering all critical examination of texts superfluous, and all references to the identity of sisters and sisters-in-law unnecessary, would annihilate opposition, comes at last to hurl the threatened avalanche, it is not a mountain but a mouse. The great master argument is simply this: that it is the solemn duty of the Legislature to refuse absolutely any relaxation of the law until not one atom of doubt remains regarding the interpretation of the text! If the novelty of this doctrine would give it force, we might at once acknowledge Mr. Roe a victor. But it is not sufficiently mundane; it has not a practical look about it. Legislatures act very much upon the theory of probabilities, and there is a force they are bound to obey—that of the majority. Does not Mr. Roe see that it is the "faith" of the great mass of the people which must settle this question; that the case is one in which it may truly be said the *vox populi* is the *vox Dei*, and in which the unnaturally fostered doubts of a few sacerdotalists must not be allowed to override the unsophisticated and ingenuous belief of the nation at large. The generous principle of the law is that, if doubt exists, the verdict should incline to liberty. In the gospel of Bishop's College, it is written that such generosity is "sin."

Thanking you, sir, most cordially for your courteous publication of these letters,

I remain your obed't servant,

R. D. MCGIBBON.